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ROLE OF SURETY IN A CONTRACT OF GUARANTEE

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RESEARCH PROPOSAL:

INTRODUCTION:

A person who serves as a third-party security for a contract between a creditor and the principal debtor is referred to as a surety. The person who supplies the principal debtor with goods or services under the surety's guarantee is known as the creditor. If the principal debtor defaults, the creditor will be responsible for making the payment or performing the obligation. The surety has the right to get the Principal Debtor to reimburse all of the expenses incurred. This is called a Contract of Guarantee, and sections 126 through 147 of the Indian Contract Act define it. It is described as “a promise to pay up debts, defaults, or miscarriages of others” in English law.[1]

A guarantee contract is conditional in nature, dependent on the principal debtor's performance or non-performance, as it only arises upon the principal debtor's default. Collateralization is the process of taking on debt to obtain a loan, credit for commodities, or employment. It may be stated directly or indirectly. It does not adhere to the original contract's conditions and is entirely different from the parties' initial agreement. Should the surety pass away, the legal representatives would be required by law to carry out the surety's duties if the arbitration clause in the agreement of guarantee is impliedly binding upon the principal-debtor even though the principal-debtor has not signed it. A creditor, debtor, and one surety enter into an arbitration agreement; however, additional sureties are not bound by the terms of the agreement.

STATEMENT OF PROBLEM:

[1] Ria Verma, Everything you need to know about Contract of Guarantee, blog.ipleaders, (Feb. 01, 2024, 4:19 PM), https://blog.ipleaders.in/everything-need-know-contract-guarantee/

Although guarantees are crucial instruments in today's business dealings, there are several questions and difficulties surrounding the surety's responsibilities and function in these agreements. The study will examine several topics in this research paper, including the absence of transparency in surety obligations, legal defenses and the discharge of sureties, and difficulties in enforcement and recuperation.

RESEARCH OBJECTIVES:

The goal of this study project is to give a thorough examination of sureties' obligations in various forms of guarantee contracts, which will help to address the aforementioned issues, to investigate the development of suretyship in guarantee contracts across time, to examine the laws that control surety in contracts for guarantees, to evaluate the part surety plays in various kinds of guarantee agreements, to assess suretyship's advantages and disadvantages, ought to delve into actual case studies that highlight the need of surety in guarantee agreements, and to offer suggestions and best practices for creating efficient guarantee contracts, to investigate the various discharge options and legal defenses that sureties can rely on in various legal settings, to look into real-world issues with guarantee agreement recovery and enforcement, comparing how various international agreements and legal systems address the function of sureties in guarantee contracts.

RESEARCH QUESTIONS AND HYPOTHESES:

1. Whether the modern role of suretyship in guarantee contracts stems from its historical development?

   Hypothesis: The suretyship's historical development has greatly influenced its current function in guarantee contracts, with alterations in business and legal procedures affecting the surety's responsibilities over time.
2. Whether the liability of surety reduced if the principal debtor's liability has been reduced by a statute?

   Hypothesis: The surety's liability can be reduced if the principal debtor's liability is reduced by statute.[2]

RESEARCH METHODOLOGY:

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[2] deepakmiglani, https://deepakmiglani.com/nature-extent-liability-surety/, (last visited Feb. 01, 2024).

The researcher has adopted the Doctrinal Research Methodology for the completion of the research. The approach involves systematic analysis of the existing legal doctrines, statutes, and judicial decisions. The research project focuses on both primary and secondary sources to understand the current developments of law, identify the gaps, and assess the allied debates. The researcher has based its research primarily on the statutes, and research articles. Proper citations have been used to acknowledge the legal sources for ensuring academic integrity.

TENTATIVE CHAPTERIZATION:

The research is discussed in five heads. They are as follows:

Chapter I speaks about the research proposal and discusses the historical background of surety in the Guarantee Contract from the Roman laws to English laws based on which the Indian Contract Act, of 1872 was drafted, and the evolution of the issue at hand. Chapter II discusses the nature and scope of the topic i.e., surety's role in the contract of guarantee. Chapter III provides a critical analysis of the statement of the problem and research questions mentioned in the research proposal. Chapter IV analyses the impact of the regulatory gaps or the grey areas in the issues raised and examines the prospects of the research. Chapter V concludes the research paper with the suggestion of the researcher with a justification.

CHAPTER I: HISTORICAL BACKGROUND AND EVOLUTION OF SURETY IN A CONTRACT OF GUARANTEE:

A guarantee contract is defined in Section 126 of the Indian Contract Act of 1872.[3] Simplified, it is a binding legal arrangement in which a creditor loans money to a major debtor. If the principal debtor defaults, a third party known as the guarantor guarantees repayment. The concept of surety antedates from the Christian era by more than 2500 years. Throughout history, family ties have played a role in the responsibility of providing surety to how families were collectively liable, in the past. At times there were customs that required vassals to act as guarantees for their lords. If the guarantor failed to protect themselves from liability it was considered a breach of trust leading to several legal consequences. The development of suretyship and collateral security has evolved alongside changes in concepts, especially as the state's influence in ensuring debt payment grew. Additionally, advancements in trade relations and ethical frameworks have also influenced suretyship. Over time there has been a shift in

[3] The Indian Contract Act, 1872, 126, No. 09, Acts of Parliament, 1872 (India)

focus from the guarantor to the debtor resulting in reduced liability for the guarantor. As the power of the state increased creditors found themselves in positions and became less inclined to engage in burdensome preliminary execution measures. With protection available self-help, practices have become obsolete—similar, to how mortgagees rarely resort to legal actions unless necessary.

Roman law boasted an intricate system of suretyship, reaching its culmination in the legislation of Justinian and persisting with minimal alterations in contemporary Continental legal codes. This system, evolving gradually and discernible in the legal literature of the Empire, remains somewhat enigmatic in its early history, akin to many aspects of the Republic's legal framework. The five mentioned forms of suretyship included *Sponsio* (pledge), *fidepromiso*, *fidejussio* (surety), *constituting* (constitute), and *mandatum* (mandate/command). Among these, *Sponsio* and *fidepromiso*, the most ancient, lapsed during the Empire. *Sponsio*, a formal verbal contract exclusive to Roman citizens, originated from the ancient civil law's solemn question-and-answer ritual (*spondes? spondeo*), likely rooted in religious practices, symbolizing a form of self-pledge to a deity. The ancient Roman legal practices involved two forms of suretyship: "*sponsores*"(sponsers) and "*fidepromisors*." The former was earlier and applied when one party was a non-citizen, conducted verbally using the phrase "*promittisf promitto* "(I promise). Both forms did not impose obligations on the surety's heir and were constrained by early, undated statutes. The "*lex Furia*" limited the liability of sponsors and fidepromissors to two years, with each surety accountable for their proportional debt share. The "*lex Apuleia*" (the law of Apuleia) allowed action against co-sureties by one who paid more than their share, while the "*lex Cicereia*" (the law of Cicereia) mandated creditors to inform sureties about the debt amount and number of co-sureties before commitment.

The two modes by which the surety and principal relation might be produced were *constitutum* (established) and *mandatum qualificatum* (qualifies command). The first is an unofficial contract, executable by the praetor, to settle another party's obligation on a specified day; before Justinian, this contract was restricted to pledges about *res fungibles* (replaceable things). The latter is when one individual (the *mandatarius*) asks another (the *mandator*) to lend money to a third party, the first had a duty to protect the creditor from harm. Most of the time, a mandator replaced a *fidejussor* (surety) almost exactly, and the Digest and Code put them under the same heading. However, because it was a type of *mandatum*—the closest Roman legal concept to the agency in the contract—and because the agreement that produced the surety's duty was completely different from the debtor's, there were certain idiosyncrasies.[4]

Due to Latin culture's strong effect on medieval ideas, as well as the natural development of regional institutions responding to changing conditions, Roman law was incorporated into European law. Suretyship played a significant role during this period, serving as an example of how legal theories have continuously changed to reflect social and economic changes that their predecessors have frequently failed to recognize. In 1365, the debtor and surety, who are seen as equal co-principals, jointly pledged to carry out a mutually or separately enforceable contract. The severe common law guidelines that apply to such obligations thereafter control their relations with the creditor. Until a new law is passed, these regulations remain in effect.

Sureties may bring a debt action to recover the principle after settling a debt. In instances such as **Wroteham v. Canewold**[5], a prudent surety usually obtains a counter-bond for indemnity. A pledged individual who has been fined cannot claim compensation, unlike sureties. Magna Charta contained a provision allowing sureties of the king's debtors to pursue reimbursement; this ability was not extended to bail in criminal proceedings, so sureties had no incentive to guarantee the principal's appearance. Subsequently evolving one well-known application of the general principle is the rule that states that a binding agreement between the creditor and the principal debtor, established without the surety's approval, to give time to the latter will release the surety.

The term "suretyship" for supplementary contracts has mostly been superseded by "guarantee" in contemporary English law. Although surety and guarantor are sometimes used synonymously in American situations, this is not always the case. Courts differ in their standards and outcomes for this distinction, and the provisions of the contract govern who is liable. In essence, suretyship is a promise of stringent performance or payment. A contract of guarantee is described by the Indian Contract Act as an arrangement to carry out a third party's promise or satisfy their obligation.

Receiving indemnity or reimbursement for losses incurred as a result of the principal's default is a surety's principal equitable right. In the fifteenth century, Chancery (the lord chancellor's

[4] livemint, https://www.livemint.com/Companies/vX2jFAXCHsN0Ouz9tB2tBP/How-the-2008-financial-crisis-changed-banking.html, (last visited Feb. 6, 2024).

[5] Y. B. 4 Edw. II (S.S.) 147 (1311)

court in the UK High Court) recognized the indemnity contract, particularly in cases where the surety depended on the debtor's promise. Co-sureties may be asked to contribute if a surety covers more than their portion of the joint liability. This right is founded on the idea of burden equality, which is acknowledged in common law for joint obligations (but not for co-sureties) and in continental jurisprudence to a limited degree. This was laid in **Lawson v. Wright**[6] by Sir Lloyd Kenyon. Although there were few examples before the seventeenth century, Charles I's reign saw the principle become established. The legal distinction between pro rata liability and equitable division was ultimately rendered meaningless in England by the Judicature Act of 1873. Nonetheless, there is a trend in the US toward using equitable principles in court cases. However, the Court of Chancery continues to have jurisdiction over disputes involving complex accounts and several parties, providing a more useful remedy in certain situations. To enable a thorough settlement of rights and obligations in such cases, it is advisable to file a combined chancery action against the principal and co-sureties. These rules were incorporated in the guarantee contract in India since the country adopts both civil and common law principles.

CHAPTER II: NATURE AND SCOPE OF SURETY'S ROLE IN A GUARANTEE CONTRACT UNDER INDIAN AND OTHER JURISDICTIONS

A guarantee contract is conditional, dependent on the principal debtor's performance or non-performance, as it only arises upon the principal debtor's default. This was held in **Satyanarayan Kamal Kumar v Birendra Pr Singh**[7]. Collateralization is the process of taking on debt to obtain a loan, credit for commodities, or employment. It may be expressed or implied[8]. It does not adhere to the original contract's conditions and is entirely different from the parties' initial agreement[9]. Should the surety pass away, the legal representatives would be required by law to carry out the surety's duties[10]. If the arbitration clause in the agreement of guarantee is impliedly binding upon the principal-debtor even though the principal-debtor has

[6] 1 Cox Ch. 275 (1786)
[7] AIR 1979 Cal 197 [LNIND 1979 CAL 14]
[8] Blueorchard Microfinance Fund v Share Microfin Ltd, (2015) 192 Comp Cases 9: (2016) 3 ALD 269.
[9] National Highways Authority of India v Ganga Enterprises, AIR 2003 SC 3823
[10] Durga Priya Chowdhury v Durga Pada Roy, AIR 1928 Cal 204

not signed it[11]. A creditor, debtor, and one surety enter into an arbitration agreement; however, additional sureties are not bound by the terms of the agreement[12].

A surety contract has two essential components. First and foremost, consideration and a recoverable principal obligation are needed. Second, consideration must come from both sides. In the event of non-payment, the security provided by the debtor serves as consideration for the creditor. The surety's assurance of payment provides security, which is what the debtor considers. In return, the creditor shows appreciation for the surety by acting or making commitments that will help the principal debtor[13]. As an illustration, A sells and delivers things to B. Then, C asks A to postpone suing B for the debt for a year, promising to reimburse them if B fails to make the payment. A grants the desired forbearance. This sufficiently fulfills C's consideration[14]. Consideration also applies if the creditor consents to refrain from pursuing legal remedies against the principal debtor at the surety's request[15]. But it was to be properly noted that—Mere delay on the part of the creditor to bring a lawsuit against the principal debtor or to apply any other remedy against him does not, in the absence of any clause in the guarantee to the contrary, release the surety[16]. In **Ujjal Transport Agency v Coal India Ltd**.,[17] the court held that neither the payment nor the guarantee can be claimed without consideration. Section 146 of the Indian Contract Act, 1872 states surety's rights to the co-sureties as[18].

The rights of surety against the creditor are mentioned in section 141 of the Indian Contract Act, of 1872. The right of the surety to receive a portion of the security held during the guarantee contract. In terms of security, the surety's position is identical to the creditor's. A creditor is required to disclose the security to the surety; it makes no difference if the surety knows about the security or not. The surety is entitled to a share if the principal debtor defaults on the payment and the surety has satisfied all outstanding debts. In the **State of Madhya Pradesh v Kaluram**[19], the court held that the surety has every right against the creditor to

[11] Chand Chits and Finance Pvt. Ltd. v Super Advertisers, AIR 1992 Del 85
[12] S N Prasad v Monnet Finance Ltd., AIR 2011 SC 442: (2011) 1 SCC 320
[13] Indian Contract Act, 1872, § 127
[14] Prasanjit Mahtha v United Commercial Bank Ltd, AIR 1979 Pat 151
[15] Madan Lal Sobe v Rajasthan State Industrial Development & Investment Corpn Ltd, (2006) 135 DLT 554
[16] Indian Contract Act, 1872, § 137, No. 09, Acts of Parliament, 1872 (India)
[17] AIR 2011 Jha 34
[18] Indian Contract Act, 1872, § 146, 'Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor'
[19] 1967 SCR (1) 266

claim the security and is discharged of the amount paid in the 1st installment by the principal debtor. The surety can exercise his right against the creditor in an instance where the principal debtor submits his house as security to receive a certain amount from the creditor, and the debtor defaults, and the surety is discharged to pay that certain amount of worth from the security.

According to Section 128, the liability of the surety is co-extensive with that of the principal debtor in case of default unless upon some agreement while entering into the contract. In **Central Bank of India v C.L. Vimala**[20] the Bombay High Court held that creditor can directly claim the amount from the surety in case of default by the principal debtor without approaching him first. Surety's liability increases correspondence to that of the principal debtor unless there is a ceiling limit agreed upon in the contract. **Jagdish Sarda v. SBI**[21], **Bank of India v. Surendra Kumar Mishra**,[22] and **Bank of Bihar Ltd. v. Damodar Prasad**[23] held that the liability of surety arises due to the lack of knowledge of surety, on unauthorized conduct of the principal debtor, and lack of prior impediment by the principal debtor.[24] Surety's rights against the principal debtor are the right to subrogation, rights to implied promise to indemnify, and, securities received by the creditor after the guarantee contract. Section 140 states the right of subrogation. Upon discharging his rights and duties i.e., the principal debtor, the surety can step into the shoes of the creditor and can claim the amount from the principal debtor. The surety can use this doctrine to retain the property or amount by imposing a temporary injunction in case the principal debtor tries to threaten or fraud the creditor[25]. Section 145 of the Indian Contract Act[26] states there is an implied duty on the principal debtor to indemnify the surety concerning default during the period of discharging the loan amount. Section 141[27] states the

[20] (2015) 7 SCC 337
[21] AIR 2016 Cal 2 48
[22] (2003) 1 BC 45 (Jhar.) 49
[23] AIR 1969 SC 297
[24] Raghu Raman, "Payment of Principal or Interest Principal Debtor or by Surety, Does or Does Not, Save The Period of Limitation Against The Other, docs.manupatra, (Feb. 01, 2024, 4:19 PM), https://https://docs.manupatra.in/newsline/articles/Upload/D7B63FB0-9405-4589-84CE-D6B13CEB59F7.pdf
[25] State Bank of India v Fravina Dyes AIR 1989 Bombay 95
[26] Implied promise to indemnify surety. —In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but, no sums which he has paid wrongfully.
[27] Surety's right to benefit of creditor's securities. —A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

surety has the right to benefit from the security that the creditor has against the principal debtor. In case of default, if the surety pays the default amount, he can benefit from the security if not, the amount being deducted from the security, he can be discharged.

CHAPTER III: RESPONSIBILITIES AND DISCHARGE OF SURETYSHIP:

As per the Indian Contract Act of 1872, several requirements must be met before a surety is released from liability. First off, a surety has the right to cancel a specific guarantee by giving the creditor notice before the obligation develops. Furthermore, the guarantor retains responsibility for previous transactions even after rescinding a continuing guarantee with notice to the creditor[28]. Second, unless a contract states otherwise, a surety's death automatically revokes their continued assurance for all future transactions. But the estate of the deceased surety is nonetheless accountable for earlier deals[29]. Finally, as stated in Section 133[30], the surety may be released based on the creditor's actions. If the contract terms are changed without the surety's approval, the surety is no longer liable for any transactions that take place after the change. Notably, a non-substantial or advantageous change does not release the guarantor from liability, as was the case in **M.S. Anirudhan v. Thomco's Bank**[31], when the surety benefited from a reduction in the guaranteed overdraft amount. In this instance, the court held the surety liable since it deemed the modification beneficial rather than significant.

According to Section 134[32], the surety will also be released if the principal debtor is discharged as a consequence of a contract between the creditor and the principal debtor or if the creditor takes legal action and the principal debtor is legally discharged. Notably, in the 1982 case of **Maharashtra SEB vs. Official Liquidator**[33], a compromise that releases the principal debtor also releases the guarantor, while insolvency laws that result in the principal debtor's discharge

[28] Indian Contract Act, 1872, § 130, Revocation of continuing guarantee —A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.
[29] Indian Contract Act, 1872, § 131, Revocation of continuing guarantee by surety's death —The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.
[30] Discharge of surety by variance in terms of contract —Any variance, made without the surety's consent, in the terms of the contract between the principal [debtor] and the creditor, discharges the surety as to transactions subsequent to the variance.
[31] 1963 AIR 746
[32] Discharge of surety by release or discharge of principal debtor —The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.
[33] AIR 1982 SC 1497

do not release the surety. [34]When the surety's liability is diminished by a statutory provision—like the Debt Relief Act—the legality of Section 134 is called into question. On this issue, conflicting rulings from the High Courts in Madras and Nagpur surfaced. The Madras High Court ruled, citing the Madras Agriculturists' Debt Relief Act, that the surety is solely liable for the decreased debt amount[35]. The Nagpur court stated that the act intended to relieve the principal debtor rather than the surety[36]. To protect the debtor's interests, the Madras High Court's position in favor of a surety's reduced liability was upheld in **Aypunni Mani v. Devassy Kochouseph**[37]. Strictly construing a surety's commitment to limit their liability to what is expressly specified in the contract is the basis of the strictissimi juris principle, which is a fundamental idea in suretyship.

As to Section 135 of the law, a contract that includes a composition, a time extension, or a commitment not to suit, made by the principal debtor and the creditor, dismisses the surety unless the surety agrees to the arrangement. The surety is not released from obligations if the creditor agrees with a third party to extend the principal debtor's period, as stipulated by Section 136. Nonetheless, an exception is established in the **Wandoor Jupiter Chits v. K P Mathew**[38] AIR 1980 case when the major debtor acknowledges the debt and the statute of limitations is extended. In reference to the Limitation Act, Section 18[39] of the 1963 Act permits the resumption of the limitation period from the date of acknowledgment, but only to the party acknowledging and the party being sued.[40] The issue of whether a debtor's acknowledgment is

[34] biz.libretexts, https://biz.libretexts.org/Bookshelves/Civil_Law/Foundations_of_Business_Law_and_the_Legal_Environment/11%3A_Secured_Transactions_and_Suretyship/11.04%3A_Suretyship, (last visited Feb. 6, 2024).
[35] Subramania Chettiar v. Aypunni Mani v. M.P.Narayanaswami Gounder, AIR 1951 Mad 48
[36] Balkrishna v. Atmaram, AIR 1944 Nag 277
[37] AIR 1966 Ker 203
[38] AIR 1980 Ker 190
[39] Effect of acknowledgment in writing— (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. (2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received. Explanation.—For the purposes of this section,— (a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right, (b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.
[40] justia, https://www.justia.com/trials-litigation/lawsuits-and-the-court-process/, (last visited Feb. 6, 2024).

enough to maintain the debtor's and the surety's obligations emerges in the context of a guarantee contract. According to the reasoning, any default would apply to the guarantor for as long as the principal debtor's duty endures, unless the surety can demonstrate discharge under the terms of the Contract Act or other Limitation Act sections, with the exception of Section 18, which has no bearing on collateral contracts. A surety is not a joint contractor. Hence, section 20(2)[41] does not apply to them.

It is emphasized in Section 137[42] that the guarantor is not immediately released from liability simply by choosing not to pursue legal action or by not employing all available remedies against the principal debtor.[43] According to Section 139[44], the guarantor is released from liability if the creditor's activities hinder the surety's ability to pursue the principal debtor. The surety in the **State of MP v. Kaluram**[45] case was released when the creditor's carelessness resulted in the sale of the mortgaged goods for a negligible sum of money. The 1980 case of **State Bank of Saurashtra v. Chitranjan Ranganath Raja**[46] serves as more evidence that the surety is not responsible for damages arising from the creditor's improper handling of the pledged goods. In addition, the **Hiranyaprava v. Orissa State Financial Corp**[47] judgment established that the creditor must notify the surety before disposing of security. If such notification is not given, the surety is released from responsibility for any deficit. Nonetheless, the guarantor is still liable if the hypothecated commodities are in the debtor's possession and their loss is unconnected to the creditor.

When a new contract with the same parties or different ones emerges, mutually discharging the previous contract, a contract of guarantee may be discharged by novation, as per Section 62. Through novation, the surety is released from the initial assurance. The invalidation of

[41] 20. Effect of acknowledgment or payment by another person- (2) Nothing in the said sections renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed by, or of a payment made by, or by the agent of, any other or others of them.

[42] Creditor's forbearance to sue does not discharge the surety. —Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

[43] moneylife, https://www.moneylife.in/article/guarantors-liable-to-pay-if-debtors-default-rules-supreme-court/26005.html, (last visited Feb. 6, 2024).

[44] Discharge of surety by creditor's act or omission impairing surety's eventual remedy. —If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

[45] 1967 SCR (1) 266

[46] 1980 AIR 1528, 1980 SCR (3) 915

[47] AIR 1995 Ori 1

assurances obtained by the creditor by misrepresentation or concealment of important facts is also covered by Sections 142 and 143. A guarantee loses validity if it is obtained due to a creditor's deception or lack of communication about material information. The failure of a co-surety to join can affect a guarantee's legality, as stated in Section 144. Additionally, unless the contract specifies otherwise, Section 128 imposes a surety's duty as coextensive with the principal debtor. Limitations may be imposed by the surety in the contract, even though their obligation is normally coextensive with the principal debtor's. The term "co-extensive" denotes the highest culpability. The level of culpability can be mitigated if a portion of the debt is recovered by selling specific commodities, as per the ruling in **Harigopal Agarwal vs State Bank of India**[48], even though the surety may still be held accountable for the full debt or obligations. A surety may also impose restrictions on the guarantee under Section 144, such as compelling a third party to become a co-surety. According to **Bank of Bihar Ltd. vs. Damodar Prasad** [49], which overruled earlier court rulings, the court cannot impose limitations if the responsibility is unconditional.

CHAPTER IV: CONCLUSION

This in-depth examination explores the development of surety in a contract of assurance from antiquity to the medieval legal systems of Europe and back, ultimately examining how Roman legal ideas were incorporated into English and Indian law. A long-lasting legacy is the complex Roman suretyship system, which took many forms, including fidepromiso and sponsio. The analysis delves deeper into the evolution of suretyship over time, highlighting the change in emphasis from guarantor-centric to debtor-centric. The incorporation of equitable principles, including subrogation and indemnity rights, into suretyship agreements is examined, emphasizing the development of legal theories and how they are applied in various legal contexts.

The study makes clear that a guarantee contract is conditional and arises upon the principal debtor's default while discussing the nature and extent of surety's involvement in guarantee contracts. It explains the fundamental elements of a surety contract, with a focus on consideration and a principal duty that is recoverable. A comprehensive understanding of suretyship dynamics is provided by the in-depth examination of the surety's rights and

[48] AIR 1976 MAD 211

[49] 1969 AIR 297, 1969 SCR (1) 620

obligations against the principal debtor, co-sureties, and creditor. The obligations and fulfillment of suretyship are clearly described, clarifying the requirements for a surety's release from liability. The Indian Contract Act's Sections 133, 134, and 135 are examined closely, examining the circumstances under which a surety may be released due to modifications in the terms of the contract, the principal debtor's discharge, or contractual novation.[50] This article examines how sections 142 and 143, which deal with misrepresentation and concealment in guarantee contracts, interact, highlighting the complex legal issues at play. Conclusively, this exhaustive examination highlights the historical development, essence, and release of surety in guarantee contracts, offering a comprehensive comprehension of the legal structure overseeing this crucial facet of contractual arrangements.

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